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ALLIANCES IN MEXICO
AND SRI LANKA

October 24, 2019

VIA ECF

Honorable Edgardo Ramos
United States District Judge for the Southern District of New York
40 Foley Square
New York, NY 10007

Re: Kraft Foods Group Brands LLC v. Bega Cheese Limited (1:17-cv-8104)(ER)

Dear Judge Ramos:

This letter is submitted on behalf of respondent Bega Cheese LLC (“Bega”) in response to the Court’s October 10, 2019 Order directing the parties to provide a written update as to the status of the above-entitled proceeding.

On May 10, 2018 – three days after the last status report Bega provided to the Court – attorneys for petitioner Kraft Foods Group Brands LLC (“KFGB”) in the proceeding KFGB and HJ Heinz Company Australia Limited filed in the Federal Court of Australia advised that Court that they were going “to move expeditiously to a trial [in the Federal Court of Australia] on all issues, including the trade dress dispute that Kraft had intended to arbitrate.” Then, on May 17, 2018, KFGB filed a Further Amended Statement of Claim in the Australian proceeding, which included its trade dress claims.

Based on KFGB’s decision to proceed to trial on all issues (including the trade dress dispute) in Federal Court in Australia, it appeared to Bega that there was no longer any basis or reason for KFGB to arbitrate the claims described in the petition that KFGB had filed in this Court to compel Bega to arbitrate. I therefore sent KFGB’s counsel two letters in June 2019 asking them to stipulate to the dismissal with prejudice of the petition KFGB filed in this Court to compel arbitration. On June 19, 2018, one of KFGB’s attorneys called me to say that KFGB would not agree to dismiss the petition and intended to keep the case in a “holding pattern” while the litigation went forward in Australia.

Over the course of twelve days between August and November 2018, the Federal Court of Australia conducted a trial of the liability issues raised by KFGB’s claims and Bega’s

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counterclaims. In May 2019, it handed down a Judgment on the liability issues overwhelmingly in favor of Bega. Among other things, Federal Court of Australia found that the trade dress belonged to Bega.

KFGB filed an appeal from the Australian Judgment. Its appeal is scheduled to be heard before the Full Court of the Federal Court of Australia in November 2019.

No matter what the outcome of KFGB's appeal, Bega continues to believe that nothing remains to be arbitrated. As we stated in the attached letter to the International Centre for Dispute Resolution, we are aware of no basis for holding the arbitration in abeyance – and KFGB has provided none. For these reasons, Bega believes the petition KFGB filed in this Court should be dismissed with prejudice.

Respectfully,



Fran M. Jacobs

Encl.

cc: Paul Weiss Rifkind Wharton & Garrison LLP (via ECF w/encl.)

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March 26, 2019

VIA E-MAIL

J. Brian Johns, LL.M.
International Case Counsel
International Centre for Dispute Resolution
120 Broadway, 21st Floor
New York, NY 10271

Re: Kraft Foods Group Brands LLC v. Bega Cheese Limited (Case No. 01-0000-7749)

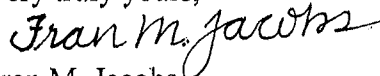
Dear Mr. Johns:

We received a copy of the March 21, 2019 response of claimant Kraft Food Group Brands LLC ("KFGB") to your inquiry about the status of the action it filed in the Federal Court of Australia, and write to bring to your attention some additional facts that KFGB failed to mention. Based on these additional facts, respondent Bega Cheese Limited ("Bega") believes that the International Centre for Dispute Resolution ("ICDR") should treat KFGB's arbitration as closed.

As we advised you in our May 7, 2018 letter, the Federal Court of Australia issued an order on May 4, 2018 enjoining KFGB from taking any steps in the arbitration before the ICDR pending the determination of the court proceeding in Australia. KFGB thereafter amended its pleadings in the Australian court proceeding to include its trade dress claims, and Bega, in turn, asserted cross-claims alleging ownership of rights in the disputed trade dress. Between August 2018 and November 2018, the Federal Court of Australia conducted 12 days of trial on KFGB's claims and Bega's cross-claims, and will render a decision on those claims and cross-claims.

Given the scope of the issues that went to trial in the proceeding in the Federal Court of Australia, including the trade dress issues KFGB had intended to arbitrate, Bega does not understand why KFGB has asked the ICDR to hold its arbitration in abeyance – and KFGB's correspondence provides no explanation. If there is an explanation for this, KFGB should provide it.

Very truly yours,



Fran M. Jacobs

cc: Paul Weiss Rifkind Wharton & Garrison LLP (by e-mail)

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